

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

THE NORTH CAROLINA  
GROWERS' ASSOCIATION, INC.,

Plaintiff,

v.

HILDA L. SOLIS, U.S.  
DEPARTMENT OF LABOR, MAS  
LABOR, MAS-H2A, K-T LABOR,  
AWMA L.L.C., ANDREW JACKSON,  
and LABOR SERVICES  
INTERNATIONAL,

Defendants.

Case No.: 1:11-cv-00198-WO-LPA

**DEFENDANTS MAS LABOR, MAS-H2A  
AND LABOR SERVICES INTERNATIONAL'S  
MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

Pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), Defendants Mid-Atlantic Solutions, Inc., incorrectly identified as MAS Labor and MAS Labor H2A, LLC, incorrectly identified as MAS-H2A (collectively as "MAS Labor") and Labor Services International ("LSI"), by counsel, requests the Court dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

As more particularly described in the Memorandum in Support of Defendants MAS Labor's and LSI's Motion to Dismiss, which is being filed contemporaneously with this Motion and is incorporated herein by reference pursuant to Fed. R. Civ. P. 10(c),

Plaintiff's Amended Complaint should be dismissed for lack of subject matter jurisdiction based on well-settled Supreme Court precedent. First, Plaintiff's Amended Complaint does not challenge an agency action, but rather improperly seeks judicial interference with respect to the United States Department of Labor's ("DOL") enforcement of the H-2A program. *See Lujan v. National Wildlife Federation, et al.*, 497 U.S. 871, 891 (1990). Second, Plaintiff's Amended Complaint is not ripe because it fails to assert or complain of a final agency action as required by the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* *See Lujan*, 497 U.S. at 882. Instead, Plaintiff seeks for this Court to step into the DOL's shoes and take "final agency action." Third, Plaintiff's allegations pertain to matters which Congress has given the DOL sole discretion, and thus are not subject to review under the APA. *See Hackler v. Chaney*, 470 U.S. 821, 832 (1985). Finally, even if the Court finds that it does have subject matter jurisdiction, MAS Labor and LSI should be dismissed as they are not required parties under Fed. R. Civ. P. 19(a) and Plaintiff's Amended Complaint does not seek any relief against these non-government entities.

WHEREFORE, Defendants MAS Labor and LSI respectfully requests that the Court dismiss plaintiff's Amended Complaint, award Defendants MAS Labor and LSI their costs and attorney's fees; and award Defendants MAS Labor and LSI any other relief the Court deems just and proper.

Dated this 9<sup>th</sup> day of May, 2011.

Respectfully submitted,

s/ Aaron J. Longo  
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Labor Services International

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 9, 2011, I electronically filed Defendants' MAS Labor and LSI's Motion to Dismiss Plaintiff's Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

W.R. Loftis, Jr., Esq., CONSTANGY, BROOKS & SMITH, LLP, 100 N. Cherry St., Suite 300, Winston-Salem, NC 27602, (336) 721-1001, rloftis@constangy.com, counsel for plaintiff; Jessica W. P. D'Arrigo, United States Department of Justice, POB 868, Ben Franklin Station, Washington, DC 20044, (202) 307-8638, Jessica.W.DArrigo@usdoj.gov, counsel for defendants Hilda L. Solis and U.S. Department of Labor; Jessica C. Tyndall, Brown Law, LLP, 4130 Parklane Avenue, Suite 130, Raleigh, NC 27612, (919) 719-0858, Jessica@brownlawllp.com, counsel for defendant AWMA, LLC; Andrew M. Jackson, Andrew M. Jackson Attorney-at-Law,

POB 27, Clinton, NC 28329-0007, (910) 592-4121, andrewjacksonclinton@yahoo.com;  
and sent a copy of the foregoing by U.S. Mail to Kentucky Tennessee Labor Group, c/o  
Patricia Soward, 1646 Duntreath Drive, Lexington, KY 40504-2353; and Kentucky  
Tennessee Labor Corp., c/o/ Patricia Sowards, 3209 Monida Court, Lexington, Kentucky,  
40515-5435.

Respectfully submitted,

s/ Aaron J. Longo

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